

<b>Support Maryland Health Benefit Exchange to Implement the Affordable Care Act (ACA)</b> <b>Maryland Health Benefit Exchange (Exchange)</b> <b>SOLICITATION NO. EXCHANGE - (DHMSO294031)</b> <b>Vendor Question Responses (7th Set) - Published 12/16/2011</b>			
Reference Section / Page Number	Reference Requirement	Clarifying Question	MD Response
RFP Section 2.2 Service Level Metrics (p35) Attachment A, Section 29 Liquidated Damages (p79)		We would expect the final contract to reflect that liquidated damages are the sole and exclusive financial remedy with respect to a particular failure (understanding that termination may be an additional, non-financial remedy), and that if the Offeror has already paid liquidated damages for failure to meet a stated service metric, and the State decides to pursue actual damages, the amounts paid would be credited against damages awarded.	The Exchange does not agree that liquidated damages are the sole or exclusive financial remedy and reserves the right to seek actual damages where appropriate. However, any amounts paid as liquidated damages would be credited against later-awarded damages arising from the same harm.
Attachment U – Orals Presentation Guidelines		The instructions reference the limitation of a (total of 10 individuals for their presentations inclusive of other non-key corporate representatives). Due to nature of the agenda with different segments (presentation, demonstration, Q&A) outlined in the 3.5 hour period, can we assume that the limitation of 10 individuals means 10 individuals at any one period of time in the room?	Yes. The limitation may be read to mean that no more than ten people may participate in the presentation at any one time.
2.7 Insurance Requirements (p50)		E&O/Professional Liability - The limit should be \$3,000,000 per claim not per occurrence as the policy is on a claims-made form and not a per occurrence form. In the 3rd paragraph on page 51, strike out "and/or Commercial Truck Insurance" as the Policy is an Automobile Policy and this Offeror does not have Commercial Trucks and strike out "If automotive equipment is required in the performance of this Contract" since automotive equipment is not required in Offeror's performance of this contract. The 4th paragraph on page 51 should read "Employee Dishonesty (as covered by a Crime Policy)" rather than "Employee Theft." Please note that we do not name anyone as an "additional named insured" as stated in the 7th paragraph on page 51, but rather we can name the Exchange as "additional insured" which still affords the Exchange the protection under the policy. Additional insured status is not afforded on the E&O Policy. With respect to the notice "of any non-renewal, cancellation, or expiration," please note that our insurers will endeavor to provide thirty (30) days notice for cancellation or material change. The Workers' Compensation policy can afford ninety (90) days. They will not notify the certificate holder for any expiration or non-renewal.	Section 2.7 of RFP will remain the same. However, the Exchange reserves the right to conduct discussions with Offerors consistent with its procurement policies and procedures.
Attachment A - Contract 6 Exclusive Use (p70)		This provision seems to conflict with Maryland's public records law which would keep commercial confidential information and trade secrets from being disclosed. Accordingly, the final contract should reaffirm that this paragraph is not intended to conflict with the confidentiality requirements elsewhere in the contract. Additionally, use and disclosure of third party licensed software needs to be in accordance with the corresponding license agreement.	Section 6 of Attachment A, will be revised to include "Except as otherwise provided in the contract..." Otherwise Section 6 will remain the same.
Attachment A - Contract 8.1 Public Information (p73)		We agree with the State's standard of disclosure and although information may be required to be disclosed under a certain circumstance per subsection (e); we do not interpret this to mean that such information is therefore generally unprotected from that point forward.	Any protections from public inspection set forth in the Maryland Public Information Act or elsewhere in Maryland law would continue to apply.
Attachment A - Contract 17 Termination for Cause (p75)		We would expect the final contract to include the mutual right of the Contractor to terminate in the event the State or the Exchange does not meet a material obligation under the contract and fails to cure such breach or develop a mutually agreed cure plan within an appropriate cure period.	Section 17 of Attachment A will remain unchanged.

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Attachment J – Business Associate Agreement (p129)		<p>We agree to comply with the requirements under HITECH for Business Associates. As such, the notification under Section III.C would be made “promptly upon discovery”, and access to our internal practices and procedures is only required for the Secretary (Section III.L) therefore Section III.I would be removed. Additionally, any audit conducted hereunder would be conducted during Offeror’s normal business hours so as not cause disruption to Offeror’s other business activities; and will be circumscribed to the extent other customers’ confidential information (including but not limited to PHI) might be disclosed.</p> <p>Because the impact of changes to the Privacy Rule and HIPAA cannot be known, we agree to work diligently and in good faith to amend the contract and/or the BAA to conform to any new or revised legislation or regulations regarding PHI to which the Exchange or Offeror become subject subsequent to the effective date of the contract or the BAA.</p>	Any discussions with an offeror will be consistent with the Exchanges procurement policies and procedures.
Attachment K Non-Disclosure Agreement (p136)		Many of the provisions of the Non-Disclosure Agreement are corporate rather than individual responsibilities such as, but not limited to, establish operating procedures and physical security measures. As the prime contractor we agree to these requirements and have no issue with our employees signing an affirmation that they are aware of and will abide by the confidentiality requirements and policies and procedures of our contract with the Exchange, but the Offeror needs to remain the point of any liability, not the individual employee. We would expect the same approach to apply to our subcontractors.	Any discussions with an offeror will be consistent with the Exchanges procurement policies and procedures.
Attachment L – Software Escrow Agreement (p141)		We agree to escrow the COTS source code licensed to the Exchange, and would clarify that the release criteria B.3 need to align with termination of the Contract. For example, the Offeror may not be actively marketing the product (3.c); however it is still providing all services as per the Contract.	Need more clarity on question.